

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT,
STATE OF UTAH, IN AND FOR THE COUNTY OF EMERY.

Independent Canal and Reservoir Company,
a corporation, S.M.Williams, J.B.Broderrick,
Mrs. L.B.Laing, E.B.Roadman, John Ralphs,
Mrs. Kate Stephens, Joseph S. Stephens, Jr.,
A. Conover, F.A.Kilpack, Jex Fugate, Andrew
Nelson, D.O.Morgan, Christian Larsen, E.H.
Barton, Ole Olsen, F.C.Sorenson, Lewis
Jacobson, E. H. Jacobsen, Livy Olsen, J.F.Olsen,

Plaintiffs,

vs.

Emery County Land and Water Company, a cor-
poration, G.T.Olsen, Lewis Halverson, H.R.
Huntsman, George Huntsman, Emery Canal and
Reservoir Company, a corporation, Gardena Land
and Water Company, a corporation, George Mar-
tinson, Frank Liller and Alonzo Brinkerhoff,

Defendants.

DECREE.

This cause was regularly before the court for trial on the 15th day of December, 1910, plaintiffs therein being represented by G.A. Iverson and Samuel A. King, and the defendant the Emery County Land & Water Company by E.A.Wedgwood, and the remaining defendants being now represented by A.H.Christensen, and the cause having been theretofore heard upon evidence adduced, and the parties in accordance therewith having stipulated upon the record, and by written stipulation made at the time and herewith filed, as to their respective rights, and the said defendant Emery Canal and Reservoir Company now demanding that a decree be entered in accordance with said stipulation of said parties affected by said decree now represented by Wedgwood, Irvine & Thurman as to the Emery County Land & Water Company, G.A.Iverson as to the plaintiffs and the defendants affected by said stipulation by A.H. Christensen; and said parties by their said respective attorneys by stipulation filed herein having waived findings of fact and conclusions of law, and the said defendants, the Gardena Land & Water Company, a corporation and _____ having failed to appear and plead or answer to plaintiff's complaint and their default for such failure having heretofore been duly and regularly entered, now, on motion of A. H. Christensen, counsel for said defendants, and in accordance with said stipulations,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Muddy Creek is a natural stream of water flowing through Emery County and varies as to its volume of flow one year with another and at different times in the same season,
2. That as between the parties to this action the defendants the Emery Canal & Reservoir Company, the Emery County Land & Water Company, G.T. Olsen, George Martinson, R. Jacobsen and other parties unknown are prior appropriators of the flowing waters of said Muddy Creek and whenever the waters of the same are reduced to their normal flow which is defined in said stipulation to be 94 cubic feet per second, to be determined by measuring the quantity flowing at the intake of the respective ditches of said parties, then the said parties are the owners of the right to the use of said normal flow of said stream in the following proportions, to wit:

Emery Canal & Reservoir Company,-----	1,111 $\frac{1}{2}$	parts,
Emery County Land & Water Company,-----	74 $\frac{1}{2}$	"
G. T. Olsen, -----	25	"
R. Jacobsen, -----	12	"
George Martinson, -----	6	"

~~722~~ + 15 = 737

Certain other persons unknown to parties are the owners and entitled to the use of 1 $\frac{1}{2}$ parts, making in all 1230 $\frac{1}{2}$ parts into which said stream, at its normal flow is divided.

3. That of the said waters that said R. Jacobsen is decreed to be the owner of the right to the use of, the ten parts thereof are to be divided and used at his present point of diversion and through his independent canal as the same now exists on his lands adjacent to said canal as the same has heretofore been used.

It is further Ordered, Adjudged and Decreed that as between the plaintiff, the Independent Canal & Reservoir Company and the Emery County Land and Water Company, that the said Emery County Land & Water Company is the owner of 14,005 shares of the capital stock of the Independent Canal & Reservoir Company out of a total of 28,000 shares, and that the said Emery County Land & Water Company shall have the right to convey through the canal of the Independent Canal & Reservoir Company said 74 $\frac{1}{2}$ parts of the 1230 $\frac{1}{2}$ parts of the normal flow of said river, without payment of costs as to the upkeep of said canal, but that it shall pay the cost of distribution thereof and shall have the right to flow said water through said canal during the non-irrigation season and should said canal break during the non-irrigation season that such break shall be repaired by the said Independent Canal & Reservoir Company, without expense to the Emery County Land & Water Company, unless said break shall be due to the negligence of the owners of 74 $\frac{1}{2}$ parts of said water.

It is further Ordered, Adjudged and Decreed that a commissioner of this court may, and will be, appointed at any time upon the application of either or any of the parties to this action and that the expenses shall be paid prorata according to the rights of each of said parties as herein decreed and said compensation shall be fixed by the court from time to time in such sum as may be proper.

And it is further ordered, adjudged and decreed that each of the parties shall maintain such proper diverting dams and measuring devices as may be from time to time found proper by the court by order, either by themselves alone or jointly, and that the expense of the construction and maintainence of the same shall be paid by the parties in such proportion and paid at such times as the court may hereinafter order and direct, and that the said sums that the court shall so direct to be paid shall be equivalent to a judgment and that execution may be issued therefor.

That as between the parties to this action the Independent Canal & Reservoir Company is the owner of all the flowing waters of Muddy Creek not hereinbefore decreed, for the irrigation of the lands lying under said canal up to a volume of one hundred and fifty cubic feet per second, and the Gardena Land and Water Company, a corporation, and the remaining defendants, whose default has been heretofore entered, have no right, title or interest whatever of, in or to the waters of said Muddy Creek.

George Christensen

Judge.

Dated this ____ day of October, 1918.

IT IS HEREBY AGREED by and between the attorneys for the plaintiff and the defendant, The Emery County Land & Water Company, in regard to the matters in controversy in the case of the Independent Canal & Reservoir Company et al vs. The Emery County Land & Water Company, et al, and in regard to all matters growing out of the subject-matter of this litigation, and incident thereto as hereinafter set forth--it being the intent of the parties, by this agreement, to specify the principal issues involved, but not to provide for the details, it being intended that each party shall use his best efforts in the adjustment of the details and carry out in spirit and intent the following specifications, to the end that the rights of the parties may be fully secured in harmony therewith and the Independent Canal & Reservoir Company put upon a proper and right, legal and business basis:

1. That the individual parties plaintiff in this case and all other stockholders, except the defendant, the Emery County Land & Water Company, and parties holding stock in its interest, represented by E. A. Wedgwood, will execute a power of attorney and proxies to G.A.Iverson, giving him full power by virtue of such instrument to act in relation to the calling of a special stockholders' meeting for the purpose of amending the articles of incorporation and electing an entirely new board of directors and for such other purposes as may be deemed necessary or proper, and to vote said stock at said meeting, giving him full power in the premises: such meeting to be called at such time as the said Iverson and the interests represented by the said E. A. Wedgwood may be determined.

2. It is agreed that in a legal manner to be determined upon such number of shares of stock as may be necessary to give the interests represented by the said Wedgwood, a controlling interest in the Independent Canal & Reservoir Company, to-wit: at least 14005 shares, shall be conveyed to such person as said Wedgwood may suggest.

3. By a decree to be entered in accordance with a stipulation this day entered into and filed in said case, the interests represented by the said Wedgwood are admitted to be, and will be decreed to be, the owners of 74.5/1230.5 part of the normal flow of Muddy Creek, the stream of water

involved in said action and that the rights to the use of waters of all other parties not the owners of an interest in said 1230.5 shares of said normal flow cease, when the volume of said river becomes reduced and falls below 94 cubic feet per second, measured at the points of diversion of the Emery Canal & Reservoir Company, what is known as the Minchey Canal, the Canal of C. T. Olsen and the canal of Rasmus Jacobsen, and it is agreed that the interests represented by the said Wedgwood shall have, at the hands of the Independent Canal & Reservoir Company a perpetual right to flow the water represented by the said 74 shares through the canal of said company during the low water season, or, in other words, when the rights to the use of the waters of said river of the other parties ceases, when the river falls to and below when is here termed the normal flow, without the payment to the company of any sum of money whatever in the way of general up-keep of said canal, it being considered that it is a benefit to said canal for said water to flow there-through during the low water season and that it would be a detriment to have the canal dry during such season, but the owners of said 74 1/2 shares of low water are to pay all the expenses of the distribution of said water to themselves or of their successors, during their use of the same during the low water period, and in case that during the time of the low water period when there was no other water in said canal the said canal should break from natural causes, including floods or from any cause outside of the neglect in case by the owners of said low water, that the Independent Canal & Reservoir Company shall make such repairs as in the ordinary course of its business and payments therefor to be made by the company.

4. It is further agreed and understood that in case any other person shall lawfully have or acquire the right to conduct water through said canal during the low water or normal flow of the said river that such person shall pay the pro rata cost of the distribution of said low water in an equal proportion with said 74 1/2 shares and hereby agree that any present stockholder of the company, if he shall acquire a right to the use of the low waters of said river may have the privileges of the use of said canal on the same terms and conditions as above specified. Provided, however, that any initial expense necessary by reason of his bringing into said ditch said low water shall be paid wholly by him.

It is understood and agreed between the parties that the minority stockholders shall have a representation of two directors on the board of directors of said company, if they so desire.

It is further agreed that should this settlement be consummated in line with the foregoing that the interests by the said Wedgwood will turn over to G.A.Iverson the following certificates of stock, to-wit:

Louis Jacobsen for 460 shares, J.P.Neilsen 740 shares, F.C.Sorensen, 460 shares, E.H.Jacobsen 460 shares, Hans Jacobsen 690 shares, Andrew Nelson 630 shares, and the right to certificate No.44 for 750 shares in the name of N.C.Larsen shall be settled and determined by L.C.Moore and A.G.Conover: and if said settlement shall be consummated in line with the foregoing provisions the interests represented by Wedgwood will cancel and deliver up all notes and mortgages and Independent Canal & Reservoir Stock which they now hold and executed by the following named persons: S.M.Williams, John Ralphs and George W. Stevens, deceased. Upon the execution by said above named parties, or their legal representatives of an instrument releasing and discharging the interests represented by the said Wedgwood from all suits, debts, dues, demands, rights of action and causes of action of every name, and nature whatsoever which they may have or might have against said interests by reason of any past transactions, and the interests represented by the said Wedgwood agree to deliver the notes of all parties which they hold which were given in connection with mortgages upon land of which said interests have become owner. They do not agree to deliver the mortgages for the reason that the mortgages have become morged in the title by reason of the deed.

SAMUEL A. KING
G. H. Iverson,
Attys for Plffs.

E.S. WEDGWOOD.
Attorney for Emery County
Land & Water Company.